the book, nor disclose the orderly mind out of which the work was fashioned, than the "Table of Contents," which is very detailed, very clear, very carefully and accurately divided, and very illuminating as to the whole character of the book. It tells not only where everything will be found, but, for the most part, what each of those things will be when it is found. Where the thing cannot be considered as settled, the proposition in the index is stated in the form of a question, which is answered as far as may be in the text.

There are text-books and text-books. The number reaches almost to infinity. They are good, bad, and indifferent, — mostly bad and indifferent. This book under review furnishes an example of what a good text-book may be. Any one would be justly proud to have written it. The student, the profession, the bench, and the bar are alike blessed by the opportunity to use it; and, perhaps better still, the science of law is advanced and improved by this highly meritorious contribution.

CHARLES THADDEUS TERRY.

COLUMBIA UNIVERSITY.

JURIS ET JUDICII FECIALIS, SIVE JURIS INTER GENTES, ET QUESTIONUM DE EODEM EXPLICATIO. By Richard Zouche. Edited by Thomas Erskine Holland. In two volumes. Washington, D. C.: The Carnegie Institution. 1911. pp. xvi, 16, 204; xvii, 186.

DE JURE NATURAE ET GENTIUM DISSERTATIONES. By Samuel Rachel. Edited by Ludwig von Bar. In two volumes. Washington, D. C.: The Carnegie Institution. 1916. pp. 16, 335; 16, iv, 233.

SYNOPSIS JURIS GENTIUM. By John Wolfgang Textor. Edited by Ludwig von Bar. In two volumes. Washington, D. C.: The Carnegie Institution. 1916. pp. 28, vi, 168; 26, v, 349.

The publication of Grotius' *De Jure Belli ac Pacis* in 1625 made an epoch. Writers on international law may be classified accordingly as *pre*-Grotian or *post*-Grotian. The *pre*-Grotian works published in the series entitled Classics of International Law have been reviewed heretofore.[1] The volumes now to be reviewed are *post*-Grotian. More accurately, they are works written by Grotius' junior contemporaries.

It ought to be enough to arouse interest in Zouche to say that his *Juris et Judicii Fecialis, sive Juris Inter Gentes, et Quaestionum de Eodem Explicatio*, was the first treatise on international law written by an Englishman. The earliest edition was published in 1650. It is here presented in facsimile, with an introduction by Sir T. E. Holland, lately Professor of International Law in the University of Oxford, and with a translation by J. L. Brierly.

Zouche was born in 1589; and he died in 1661, having spent a long life in activities whose scope is indicated by saying that he was Regius Professor of Civil Law at Oxford, Member of Parliament, Judge of the Court of Admiralty, and author of about sixteen published works, most of them dealing with law. He was a successor to the professorial chair of Gentilis, the Italian scholar who was the first to write of international law in England. Though Zouche was a contemporary of Grotius, his own writings on international law were subsequent to Grotius' *De Jure Belli ac Pacis*. Thus Zouche was obviously not the earliest of the famous writers on the subject of this work; and indeed he himself was careful to acknowledge indebtedness to predecessors.

Professor Holland, after pointing out defects in arrangement, concludes that Zouche made two valuable contributions, in that he was the first to emphasize

[1] 34 HARV. L. REV. 794.

war as a means of obtaining the rights enjoyed in time of peace and the first to point out clearly the ambiguities underlying the phrase *Jus gentium* and to introduce formally, as a proper description of the subject, the phrase *Jus inter gentes* — the forerunner of Bentham's term, International Law.

When a book is as old as this one, a reader seldom goes to it to ascertain existing law. Nevertheless, Zouche's work has many features of interest. Zouche begins by saying "Law between Nations is the law which is recognized in the community of different princes or peoples who hold sovereign power — that is to say, the law which has been accepted among most nations by customs in harmony with reason, and that upon which single nations agree with one another, and which is observed by nations at peace and by those at war." This passage, noticeably modern in tone, appears to place Zouche not with the school of theorists, but with the practical school of those collecting and classifying rules actually existent, though there is carried into the definition the somewhat theoretical point — perhaps a point which logicians would call an accident — that the rules are founded in reason. As Zouche thus emphasizes what is, rather than what ought to be, it is not surprising to find that he devotes almost the whole of his space to the statement of historical facts and the presentation of the views held by his predecessors. His historical facts, it should be said, are frequently events which his predecessors did not mention.

His work is divided into two parts. The first deals with established doctrines, and the second with vexed questions. In each part the method is chiefly to state with great clearness and brevity an historical event involving the problem and then to state with similar clearness and brevity the views of Gentilis, Grotius, and other authors. On the vexed questions Zouche seldom indicates his own opinion, unless, indeed, he may be said to favor the practice, attributed by Coke to Littleton, of stating last the view preferred by himself. Throughout each part of the work Zouche deals with peace before he deals with war, thus departing from Grotius and emphasizing his own conception that peace is not merely the preferable but also the normal status.

Early in life Zouche produced a comprehensive work entitled *Elementa Jurisprudentiae*, dealing with many heads of law, both public and private. The present treatise is one of several in which he elaborated the plan laid down in that earlier work. Even a hasty reading of it raises several questions interesting to any one caring for the history of legal literature. Is this a piece of work undertaken simply to complete a scheme based upon a professorial career; or does it have its foundation appreciably in the author's experience as Judge of the Court of Admiralty? Does the book contain much original matter; or is it chiefly a convenient systematization of the contributions made by Grotius and others? Is the book of practical use to-day? On all these matters a convenient starting point is given by the topical references at the close of Professor Holland's introduction. For example, regarding international law in time of peace there are important references on Arbitration, Armaments, Domicil, Embassy, Extradition, Sea, Treaties, and Wreckage; and regarding international law in time of war there are important references on Declaration, Booty, Capture, Contraband, Neutrality, Prisoners, Prize, Property, and Ship and Goods. If that list be too formidable, even the hurried reader should find time to read what Zouche says on dual citizenship (Part II, Sect. II, par. 13), and on Angary (Part II, Sect. V, par. 10), and on whether, when arms or ships are contraband, the materials of which they are made are contraband also (Part II, Sect. VIII, par. 8). Those passages are worth reading, both because they deal with topics still current and because they illustrate Zouche's method.

Another one of the junior contemporaries of Grotius was Rachel. He was born in 1628; and he died in 1691. He was a German. His *De Jure Naturae et Gentium Dissertationes*, which appeared in 1676, must be considered the

fruit of his professorship of the Law of Nature and of Nations in the University of Kiel. The present edition contains a facsimile of the original, an introduction by Professor von Bar of the University of Göttingen, and a translation by John Pawley Bate. The introduction explains that this work appeared a few years after Pufendorf, another of the junior contemporaries of Grotius, had overemphasized the theory denying the existence of a positive *jus gentium*, distinct from *jus naturale*, and that Rachel overemphasized the opposite theory. In other words, Pufendorf was a Naturalist and Rachel a Positivist, going much beyond Zouche. The whole of the dissertation on the Law of Nature is devoted to discussing differences between theories, and so is at least half of the dissertation on The Law of Nations. To-day such discussions seem dreary, uninteresting, and useless; but the bitter attacks on Hobbes may attract some readers. In the dissertation on The Law of Nations there are some passages of a practical nature (Sections XXXIX–LXXIX), containing rules regarding just war, destruction and plundering, capture, truce, postliminium, hostages, ambassadors and their retinue, and other matters. The author's method differs from Zouche's, in that there is less use of historical instances. There are many passages of an enlightened tone; and any one of scholarly taste will find it profitable to compare Rachel with the other early authorities.

Textor was still another of the junior contemporaries of Grotius. He was born in 1638; and he died in 1701. He was a professor of law in the University of Heidelberg. In 1680 appeared his *Synopsis Juris Gentium*. The present volumes give a facsimile of the earliest edition, an introduction by Professor von Bar, and a translation by John Pawley Bate. Textor is usually classed as a Positivist; but he is deemed by Professor von Bar not so extreme as Rachel, for Textor believes that the law of nations consists both of *jus naturae* and of customs.

Textor deals to some extent with private law and constitutional law; but, even while he is doing so, he has international law in mind, and it is to international law that he devotes vastly the largest part of his space. Among his topics are ownership of the sea, capture, ambassadors, public and private war, just causes of war, declaration of war, captives, postliminy, truces and armistices, treaties of peace, alliances, neutrality, and the rights of the victor. The discussion adequately cites historical facts and the views of earlier authors. Textor's own views cannot be said to be always progressive, but the tone of his work is thoroughly entitled to respect.

It only remains to add that these volumes of the Classics of International Law, like the *pre*-Grotian volumes heretofore reviewed, give precisely the proper basis for scholarly and practical investigation into the history and theory of the doctrines which will be presented by counsel arguing before any international tribunal and by statesmen participating in any international conference.

EUGENE WAMBAUGH.

A TREATISE ON THE LAW OF EVIDENCE AS ADMINISTERED IN ENGLAND AND IRELAND; WITH ILLUSTRATIONS FROM SCOTCH, INDIAN, AMERICAN, AND OTHER LEGAL SYSTEMS. By Pitt Taylor. 11th Edition by J. B. Matthews and G. F. Spear. London: Sweet & Maxwell, Ltd. (Toronto: The Carswell Co., Ltd.). 1920. 2 vols. pp. cii, 1468.

When Mr. Taylor was engaged in his historic controversy with Chief Justice Cockburn over *Bedingfield's Case*, he was confronted with a passage dead against him from the sixth edition of Roscoe's "Criminal Evidence." With a